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COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES OVERSTREET,

Defendant and Appellant.

D074276

(Super. Ct. No. SCE365974)

APPEAL from a judgment of the Superior Court of San Diego County, Desiree Bruce-Lyle, Judge. Affirmed.

Aurora Elizabeth Bewicke, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, and Adrian R. Contreras, Deputy Attorney General, for Plaintiff and Respondent.

In March 2017, James Overstreet pleaded guilty to possessing hydrocodone for sale (Health & Saf. Code,¹ § 11351). He also admitted a 2008 conviction for possession

¹ Undesignated statutory references are to the Health and Safety Code.

for sale (§§ 11378, 11370.2, subd. (a)). The trial court sentenced him to formal probation. In July 2017, the probation department charged Overstreet with violating the terms of his probation. In July 2017, the court formally revoked and reinstated probation after Overstreet admitted that he violated the terms of his probation.

In January 2018, an ex parte warrant was delivered charging Overstreet with further violations of probation, including a failure to report, using a controlled substance, and knowingly using and/or possessing alcohol. The court granted a joint request to withdraw Overstreet's plea. Overstreet then signed a new plea agreement for "unlawfully possess[ing] hydrocodone for the purposes of sale" under section 11351.

Under the new plea agreement, the court sentenced Overstreet to three years split custody, with two years to be served in local jail and one year to be served on mandatory supervision. The court awarded 392 days of custody credits, including 196 actual custody credits and 196 conduct credits pursuant to Penal Code section 4019. The order granting mandatory supervision, filed the same day, included a number of conditions, including treatment, alcohol, and drug conditions.

In June 2018, Overstreet attended a pre-release hearing. At that hearing, he objected to imposition of alcohol conditions on supervised release. The court overruled the objection, stating that the program Overstreet would be entering required that he refrain from alcohol. Overstreet timely appealed, challenging "the sentence or other matters occurring after the plea," in reference to the June 2018 hearing.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. She presented no argument for reversal but asked this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has identified the following issue that "might arguably support the appeal" (*Anders v. California* (1967) 386 U.S. 738, 744 (*Anders*))—whether the imposition of no-alcohol condition as a requirement of Overstreet's mandatory supervision violated a fundamental right. We offered Overstreet the opportunity to file a brief on his own behalf, and he has not responded.

At age 13, Overstreet began drinking alcohol and using marijuana and methamphetamine. Prior to arrest, he used methamphetamine daily and drank on the weekends. Where a defendant has a history of drug abuse and is convicted of a drug-related offense, alcohol use may lead to future criminality. (*People v. Beal* (1997) 60 Cal.App.4th 84, 87.) The court's imposition of alcohol related probation conditions was reasonably related to Overstreet's future criminality and within the sound discretion of the trial court. (See *People v. Lent* (1975) 15 Cal.3d 481, 486.)

We requested and received supplemental briefs addressing whether the trial court erred in calculating custody and conduct credits. Counsel agree that the trial court did not err in calculating custody and conduct credits. The People also assert that, regarding any purported error in calculating custody and conduct credits, Overstreet's notice of appeal is untimely because Overstreet was sentenced and notified of his custody credits on January 23, 2018, but did not file his notice of appeal until July 3, 2018. We agree that any

appeal regarding whether the trial court erred in calculating custody and conduct credits is untimely and, therefore, express no opinion on the correctness of Overstreet's credits. (Cal. Rules of Court, rule 8.308, subd. (a) [notice of appeal "must be filed within 60 days after the rendition of the judgment or the making of the order being appealed"].)

Our review of the record pursuant to *Wende*, including the possible issue listed by counsel pursuant to *Anders*, has disclosed no reasonably arguable issues on appeal. Competent counsel has represented Overstreet on this appeal.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.